IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

OP.No. 11588 of 2003(D)

PETITIONER:

MARYKUTTY ANDREWS W/O. P.S.ANDREWS
AGED 60 YEARS, PRESIDENT, THODUPUZHA BLOCK VANITHA CO-OPERATIVE SOCIETY LTD., NO.1-163, POST OFFICE KARINKUNNAM, THODUPUZHA.

BY ADV. SRI.M.RAMESH CHANDER

RESPONDENTS:
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1. INDUSTRIAL TRIBUNAL, IDUKKI.

2. SMT.SANTHAMMA RAJU, PUTHENPURAKAL HOUSE, THODUPUZHA.

BY GOVERNMENT PLEADER SRI.P.RAVINDRA BABU
BY ADV. SRI.JOHNSON MANAYANI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 11/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. 19842/2003 IN OP. NO.11588/2003

DISMISSED

11.07.2007 SD/- T.R.RAMACHANDRAN NAIR, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER OF THE AUTHORITY UNDER THE SHOPS AND COMMERCIAL ESTABLISHMENTS ACT.

EXT.P2:- COPY OF THE AWARD OF THE 1ST RESPONDENT IN I.D. .6 /99 DT. 1.7.02.

EXT.P3:- COPY OF THE APPLICATION FILED BY THE 2ND RESPONDENT BEFORE 1ST RESPONDENT.

EXT.P4:- COPY OF THE OBJECTION FILED BY THE PETITIONER IN ID. NO.6/99 OF IDUKKI BEFORE THE 1ST RESPONDENT.

RESPONDENTS EXHIBITS

EXT.R2(a):- COPY OF THE ORDER DT. 29.4.97 OF THE PETITIONER IN THE OP.

EXT.R2(b):- COPY OF THE CLAIM PETITION FILED BY 2ND RESPONDENT BEFOERE 1ST RESPONDENT DT. 12.7.99.

EXT.R2(c):- COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DT. 4.10.99.

EXT.R2(d):- COPY OF THE CLAIM PETITION FILED BY THE 2ND RESPONDENT BEFORE
THE 1ST RESPONDENT DT. 29.11.99.

EXT.R2(e):- COPY OF THE PAGE NO.121 OF THE PETITIONER'S SOCIETY.

EXT.R2(f):- COPY OF THE PAGE NO.139 OF THE MINUTES OF THE PETITIONER SOCIETY.

EXT.R2(g):- COPY OF THE EXTS. W3 TO W13 PRODUCED BEFORE THE 1ST RESPONDENT.

/TRUE COPY/

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T.R. Ramachandran Nair, J.

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O.P.NO.11588 of 2003-D

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Dated this the 11th day of July, 2007

JUDGMENT

This original petition is filed by the petitioner challenging Ext.P2 award passed by the Industrial Tribunal, Idukki in I.D.No.6/1999. The dispute relates to the termination of service of the second respondent who was working as a Peon in the petitioner society. The issue referred was whether the dismissal of the second respondent is justifiable.

2. The case of the workman was that she was appointed as a Peon in the society on 22.12.1995 in a permanent vacancy. The initial salary was at the rate of Rs.300/- per month which was increased after six months to Rs.400/-. The management terminated her service on 29.4.1997. The case of the workman was that she had been continuously working from 22.12.1995 to 5.5.1997.

3. The management contended that she was working only two or three days in a week and an amount of Rs.300/- was paid to her as remuneration during every month. It is admitted that the same was increased to Rs.400/-. The contention appears to be that she was only a daily waged employee.

4. Evidence was let in by the management as well as by the workman. The relevant pages of the minutes book evidencing her appointment have also been produced as Ext.W1. After considering the evidence in detail, the Tribunal held that the termination of service of the workman is illegal and consequently directed that the workman is entitled for reinstatement in service with all benefits. The counsel further submitted that the burden to prove the case was really on the workman.

5. Counsel for the petitioner argued that the workman did not produce sufficient evidence to show that her employment was continuous and therefore the view taken by the Tribunal is not correct. It was also pointed out that even though subsequently she was offered an appointment on daily wages, she did not accede to the request.

6. The second respondent has filed a detailed counter affidavit. Ext.R2(a) is the order of appointment. Exts.R2(e) and R2(f) are the relevant pages of the minutes book. It is evident from the resolution in Ext.R2(e) at page 121 of the minutes book that she was appointed after conducting an interview. Evidently, the appointment was on 22.12.1995 with a monthly salary at the rate of Rs.300/-. It was not an appointment on daily wages, evidently. The relevant resolution at page 139 of the minutes book shows that her salary at Rs.300/- per month was raised to Rs.400/- from the month

of August onwards. There also it is referred to as monthly salary and not daily wages.

7. The Tribunal, after considering the evidence elaborately entered the finding that the termination is illegal. It was noticed by the Tribunal that even though the workman had stated in her evidence that she had been signing the attendance register, the management has not produced the attendance register to prove their contention that the workman had been working only two or three days in a week. Apart from that, going by the admitted case, the appointment was on the basis of salary which is payable on a monthly basis and hence their contention that she was only a daily wages employee falls to ground. There is nothing in the resolution Ext.R2 (e) to show that the appointment was on daily wage basis. The Tribunal also observed that there was no evidence to show that the appointment was against the Co-operative Societies Act and Rules.

8. The findings entered by the Tribunal are based on cogent evidence and the approach made by the Tribunal cannot be said to be perverse also. The conclusions have been arrived at on the basis of proven materials and

hence Ext.P2 does not suffer from any legal infirmity.

Therefore, the original petition fails and it is dismissed. No costs.

(T.R. Ramachandran Nair, Judge.)

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T.R. Ramachandran Nair, J.

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O.P.NO.11588 of 2003-D

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JUDGMENT

11th day of July, 2007